

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JOSEPH WINE,)
)
Plaintiff,) Case No.
)
vs.) Phelps County Circuit Court
) Case No. 20PH-CV01444
RICHARD COMER and)
CRETE CARRIER CORPORATION,)
) **JURY TRIAL DEMANDED**
Defendants.)

NOTICE OF REMOVAL

Defendants Crete Carrier Corporation and Richard Comer, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, file this Notice for the Removal of the above-entitled action to the United States District Court for the Eastern District of Missouri, Eastern Division, and for grounds therefore respectfully state:

A. Venue is proper in the United States District Court for the Eastern District of Missouri, Eastern Division

1. The above-entitled action, now pending in the Phelps County, Missouri Circuit Court, is a civil action at law brought by Plaintiff, above-named, against Defendants to recover damages.
2. The incident alleged by Plaintiff has arisen within the jurisdiction or boundaries of the United States District Court, Eastern District of Missouri, Eastern Division.
3. Pursuant to 28 U.S.C. §1446(a), venue lies in the United States District Court for the Eastern District of Missouri, Eastern Division, because Phelps County, Missouri is within the Eastern District of Missouri, Eastern Division.

B. The Procedural Requirements for Removal are Satisfied

4. The Complaint, which is attached hereto as part of Exhibit 1, was filed and served upon Defendant Crete Carrier Corporation on November 16, 2020. Also, on December 3, 2020, counsel for Defendants agreed to accept service for Defendant Richard Comer, and it was agreed that Mr. Comer's answer would not be due until the same date as Defendant Crete Carrier's answer, which is currently December 15, 2020. Accordingly, at the time for filing this Notice of Removal under 28 U.S.C. § 1446 has not yet expired.

5. Written notice of the filing of this Notice of Removal is being given to Plaintiff and a copy of this Notice of Removal is being filed with the Phelps County Clerk of Court pursuant to 28 U.S.C. §1446(d).

6. A copy of all known process, pleadings and orders from the state case are attached collectively hereto as **Exhibit 1** in accordance with 28 U.S.C. §1446(a).

C. There is Diversity Among The Original Parties

7. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §1332(a) and removal to this Court is proper pursuant to 28 U.S.C. §1441(b)(2) because Defendants are not citizens of this State, and there is complete diversity of citizenship between all parties.

8. Plaintiff Joseph Wine was, at the time of the commencement of this action, and has been ever since, an individual domiciled in Preston County, West Virginia and is a citizen of West Virginia.

9. Defendant Richard Comer was at the time of the commencement of this action, and has been ever since, an individual domiciled in Florida and is a citizen of Florida.

10. Defendant Crete Carrier Corporation is a corporation organized and existing under the laws of the State of Nebraska, with its principal place of business in Lincoln,

Nebraska. Therefore, Defendant Crete Carrier Corporation is a citizen and/or resident of the State of Nebraska.

D. The Amount in Controversy Exceeds \$75,000

11. The matter and amount in controversy in this action, exclusive of interest and costs, exceeds the sum or value of Seventy-Five Thousand Dollars (\$75,000.00) as required by 28 U.S.C. § 1332(a).

12. Where the defendant seeks to invoke federal jurisdiction through removal, it bears the burden of proving that the jurisdictional threshold is satisfied. *Bell v. Hershey Co.*, 557 F.3d 953, 956 (8th Cir. 2009). The defendant's burden under Eighth Circuit law is "to prove the requisite amount in controversy, by a preponderance of the evidence." *Id.* "Under the preponderance standard, '[t]he jurisdictional fact ... is not whether the damages are greater than the requisite amount, but whether a fact finder might legally conclude that they are[.]'" *Mishra v. Coleman Motors, LLC*, No. 4:16-cv-01553, 2017 WL 994868, *1, *4 (E.D. Mo. Mar. 15, 2017) (slip copy) citing *Kopp v. Kopp*, 280 F.3d 883, 885 (8th Cir. 2002).

13. A removing defendant may satisfy its burden "by looking at the face of the complaint alone." *Mishra*, 2017 WL 994868, at *4 citing *Hartis v. Chicago Title Ins. Co.*, 694 F.3d 935, 944 (8th Cir. 2002).

14. Here, Plaintiff alleges that he suffered injuries in an automobile accident after being struck by a tractor-trailer, causing personal injuries. Specifically, Plaintiff has alleged that, as a result of the accident, he "suffered severe injuries and damages, including, but not limited to: past, present and future physical pain and emotional suffering; past, present and future medical care, hospitalization and treatment; past and present wage loss and impairment to future earning capacity; and impairment of health, strength and vitality." See **Exhibit 1**.

WHEREFORE, Defendants Crete Carrier Corporation and Richard Comer pray that this Honorable Court enter an Order causing said Cause No. 20PH-CV01444 of the Phelps County, Missouri Circuit Court to be removed to this Court for further proceedings, and that this Court take jurisdiction herein, and make further orders as may be just and proper.

/s/ Kevin L. Fritz

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 7, 2020, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon: David A. Brose, Michael J. Serra, Langdon & Emison, LLC, 911 Main Street, P.O. Box 220, Lexington, MO 64067, david@lelaw.com, mserra@lelaw.com, Attorneys for Plaintiff.

/s/ Kevin L. Fritz